

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

---

JERRY BOWENS

Plaintiff,

-v.-

Civil Action No.  
9:11-cv-784 (GLS/ATB)

JOSEPH T. SMITH, et al.,

Defendants.

---

APPEARANCES:

OF COUNSEL:

**FOR THE PLAINTIFF:**

JERRY BOWENS  
09-A-5598  
Plaintiff, *pro se*  
Clinton Correctional Facility  
P.O. Box 2002  
Dannemora, New York 12929

**FOR THE DEFENDANTS:**

HON. ERIC T. SCHNEIDERMAN  
Attorney General for the  
State of New York  
The Capitol  
Albany, New York 12224

RICHARD LOMBARDO, ESQ.

GARY L. SHARPE,  
CHIEF JUDGE

## **ORDER**

The above-captioned matter comes to this court following a Report-Recommendation by Magistrate Judge Andrew T. Baxter, duly filed December 7, 2012. Following ten days from the service thereof, the Clerk has sent the file, including any and all objections filed by the parties herein.

No objections having been filed, and the court having reviewed the Magistrate Judge's Report-Recommendation for clear error, it is hereby

ORDERED, that the Report-Recommendation of Magistrate Judge Andrew T. Baxter filed December 7, 2012 is ACCEPTED in its entirety for the reasons state therein; and it is further

ORDERED that defendants' motion to dismiss (Dkt. No. 19) is GRANTED IN PART, and the amended complaint is DISMISSED IN ITS ENTIRETY AS AGAINST DEFENDANTS FISCHER, PRACK AND LECLAIRE; and it is further

ORDERED, that defendants' motion to dismiss (Dkt. No. 19) is DENIED IN PART, and plaintiff's amended complaint may proceed only as to plaintiff's PROCEDURAL DUE PROCESS and RELIGION CLAIMS as against defendant SMITH; and it is further

ORDERED, that the Clerk provide a copy of this order upon the parties in accordance with the court's local rules.

IT IS SO ORDERED.

Dated: January 8, 2013  
Albany, New York

  
\_\_\_\_\_  
Gary L. Sharpe  
Chief Judge  
U.S. District Court